

Linda Willard

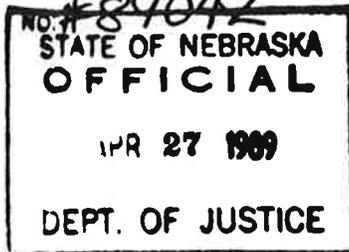
**DEPARTMENT OF JUSTICE**

**STATE OF NEBRASKA**

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STATE CAPITOL

LINCOLN, NEBRASKA 68509



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**DATE:** April 27, 1989

**SUBJECT:** Constitutionality of LB 84, as Amended - Property Tax Relief Act

**REQUESTED BY:** Senator James D. McFarland  
Nebraska State Legislature

**WRITTEN BY:** Robert M. Spire, Attorney General  
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to the constitutionality of LB 84, the "Property Tax Relief Act". Generally, LB 84, as modified by the E and R Amendments, proposes to provide property tax relief to homeowners by enacting a homestead exemption, exempting from taxation for tax years 1989 and 1990 the first \$6,800 of the actual value of a homestead, as defined pursuant to Neb.Rev.Stat. §77-3502 (Cum. Supp. 1988). Section 4 of the bill provides for a rebate of ten percent of "property taxes paid" by a taxpayer, up to a maximum amount of \$2,000 per taxpayer. "Property taxes paid", in turn, is defined in subsection (3) of Section 3 as "all real estate property taxes, exclusive of special assessments, delinquent taxes and interest, and charges for services, levied on an owner of real estate property in this state in 1989 or 1990 and actually paid by the owner." Taxes on real property qualifying as a homestead are excluded from the definition of "property taxes paid". The bill also defines "real estate property" in subsection (4) of Section 3 to exclude tangible personal property other than that described in Neb.Rev.Stat. §§77-103 and 77-1209 to 77-1209.05 (Reissue 1986 and Cum. Supp. 1988). Your specific question is whether the limitation on the amount of property tax which may be returned under the ten percent rebate provision of Section 4 of the bill to a maximum of \$2,000 per taxpayer is constitutional.

In Attorney General Opinion No. 89038, issued on April 26, 1989, we addressed a virtually identical question with regard to the constitutionality of the \$500 limit on the amount of property tax relief available to any taxpayer under the provisions of LB 809, as amended. In this opinion, we discussed at length the purpose and rationale behind the principle of uniform and proportionate taxation contained in Article VIII, Section 1, of the

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Nebraska Constitution, as well as the prohibition against legislative action releasing or discharging taxpayers from their proportionate share of taxes contained in Article VIII, Section 4, of our Constitution. Noting that the purpose of these constitutional provisions is, in essence, to "inhibit the imposition of non-uniform and disproportionate tax burdens on property owners", we concluded that the \$500 maximum relief provision in LB 809, as amended, would result in the imposition of non-uniform and disproportionate tax burdens in relation to the value of the property of certain taxpayers, in violation of the requirements of Article VIII, Sections 1 and 4.

Apart from consideration of the special provision for homestead property and the exclusion of taxed personal property, it is apparent the effect of the ten percent rebate up to a maximum of \$2,000 for real property taxes paid by taxpayers under LB 84 would be to create the same type of non-uniform and disproportionate tax treatment which we determined to be unconstitutional in our consideration of the \$500 maximum property tax relief limit contained in LB 809. Given the larger maximum dollar limit of relief contained in LB 84 (\$2,000), the existence of disparate tax burdens on property owners qualifying for the ten percent relief provided would not occur until a taxpayer's liability exceeded \$20,000. The imposition of a \$2,000 limit on the relief provided would effectively result in the imposition of non-uniform and disproportionate taxation in relation to the value of properties after the point at which a taxpayer's liability exceeded the amount necessary to reach the \$2,000 maximum amount of relief. In particular, a business with property valued at \$1 million would, at the average state tax rate of 2.6 percent, receive in effect a 7.7 percent reduction in tax liability under the \$2,000 limit presently contained in LB 84. Furthermore, a business with property valued at \$100 million would, under a tax rate of 2.6 percent, receive in effect a reduction of only .07 percent of its property tax liability.

Upon examination of the foregoing, it is evident that the effect of the \$2,000 limit on the amount of relief for property taxpayers eligible for the ten percent rebate portion of LB 84 is to create non-uniform and disproportionate tax burdens among taxpayers to the extent that certain large taxpayers will effectively be compelled to pay taxes at a higher rate in proportion to the value of their property in comparison to taxpayers whose tax liability does not exceed the maximum necessary to reach the \$2,000 limit established under the bill. As noted in our previous opinion concerning the constitutionality of the limitation on relief contained in LB 809, our state supreme court has stated: "The Legislature cannot circumvent an express provision of the Constitution by doing indirectly what it may not do

directly." Banner County v. State Board of Equalization and Assessment, 226 Neb. 236, 252, 411 N.W.2d 35, 45 (1987). As the \$2,000 maximum relief provision in LB 84 would necessarily result in the imposition of non-uniform and disproportionate tax burdens in relation of the value of the property of certain taxpayers, it is our opinion that this limitation on the amount of relief provided would violate the principle of uniformity of taxation in Article VIII, Section 1, and would contravene the prohibition against releasing taxpayers from their proportionate share of taxes, in violation of Article VIII, Section 4.

In addition, although you have not specifically addressed any further question to us concerning other provisions of LB 84, we would be remiss in our duty if we failed to discuss certain concerns we have as to the constitutionality of other portions of the bill. Section 9 of the bill, as amended, provides for relief in the form of an exemption on the first \$6,800 of the actual value of property occupied as a homestead, as defined by Neb.Rev.Stat. §77-3502 (Cum. Supp. 1988). The establishment of a homestead exemption of this nature is clearly authorized by Article VIII, Section 2, of the Nebraska Constitution, which provides, in pertinent part: "The Legislature may by general law provide that a portion of the value of any residence actually occupied as a homestead by any classification of owners as determined by the Legislature shall be exempt from taxation." Indeed, prior to 1983, the Legislature did provide a general homestead exemption based on the exemption of a percentage of the value of homestead property in the state. Neb.Rev.Stat. §77-3506 (Cum. Supp. 1980) (repealed, Laws 1983, LB 396).

Clearly, there is no reason why the Legislature may not enact a statute providing for the exemption of a portion of the value of any property actually occupied as a homestead, consistent with the terms of Article VIII, Section 2, of the Constitution. Thus, the provision of an exemption of the first \$6,800 of the value of homestead property contained in LB 84, in and of itself, does not raise any constitutional concern. The establishment of a homestead exemption of this nature should not raise any question of unreasonable classification, as the Constitution specifically creates the class of owners of homesteads by virtue of the specific provision of Article VIII, Section 2, previously cited. See, Attorney General Opinion No. 188, February 6, 1984.

Our concern as to the constitutionality of the \$6,800 homestead exemption contained in LB 84 is based on the impact of such an exemption on the tax burden of certain owners of homestead property in comparison to the effective tax burden placed on other real property owners eligible to receive the benefit of the ten percent rebate provision contained in Section 4 of the bill. Under LB 84, as currently amended, the owner of a homestead valued at

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over \$68,000 would, assuming a tax levy at the level of the state average of 2.6 percent, receive a lesser percentage of property tax relief than agricultural or commercial real property owners eligible for the ten percent reduction provided under Section 4 of the bill, even with the existing \$2,000 limit contained therein. Under such circumstances, we believe a serious constitutional question would arise as to the propriety of effectively imposing different tax burdens on the value of certain homestead property in comparison to the value of non-homestead properties, given the disparate relief which would be accorded to each type of property under LB 84. Apart from the obvious issue of whether the imposition of such disproportionate taxation in relation to the value of these respective properties would violate the principle of uniformity under Article VIII, Section 1, we believe a serious question also exists as to whether such provisions, in concert, constitute unreasonable class legislation in violation of Article III, Section 18, of the Nebraska Constitution.

Finally, we feel compelled to point out that the exclusion of taxable personal property from the relief provisions contained in LB 84 is, in our opinion, unconstitutional. Article VIII, Section 2 of the Nebraska Constitution, provides, in pertinent part: "The Legislature may classify personal property in such manner as it sees fit, and may exempt any of such classes, or may exempt all personal property from taxation." Pursuant to this constitutional authority, the Legislature has classified and exempted various types of personal property from taxation. E.g. Neb.Rev.Stat. §77-202 (Cum. Supp. 1988).

While Article VIII, Section 2, of the Constitution, allows the Legislature to classify and exempt tangible personal property from taxation, the provisions of LB 84, which effectively exclude owners of taxable personal property from eligibility for the relief available to owners of real property, do not in any way manifest any legislative action to classify and exempt personal property from taxation as contemplated by this constitutional provision. All real property and taxable personal property are in the same class for purposes of taxation, and must be valued and assessed uniformly and proportionately in accordance with the mandate of Article VIII, Section 1. Grainger Brothers Co. v. County Board of Equalization, 180 Neb. 571, 582, 144 N.W.2d 161, 168-69 (1966). By removing taxable personal property from the benefits accorded other property owners under LB 84, it is apparent that owners of personal property subjected to taxation would, in effect, be required to pay proportionately greater taxes in relation to the value of such property in comparison to real property owners. The imposition of non-uniform and disproportionate taxation in relation

to the taxable value of personal property in comparison to real property which would result from the implementation of LB 84 would, in our view, contravene Article VIII, Sections 1 and 4, of our Constitution.

Since the adoption of the Nebraska Constitution of 1871, our fundamental law has contained a requirement that taxes on property be levied proportionately in relation to the value of the property of all taxpayers. The Nebraska Supreme Court has consistently recognized that the constitutional requirement of uniformity in the area of property taxation is designed to guarantee equality in tax treatment among property owners and to insure that all property taxpayers are required to bear their proportionate share of taxes based on the value of property. See, e.g., State ex rel. Bee Building Co. v. Savage, 65 Neb. 714, 91 N.W. 716 (1902); Chicago, B. & O. R. R. Co. v. State Board of Equalization and Assessment, 170 Neb. 77, 101 N.W.2d 856 (1960); Equitable Life v. Lincoln County Board of Equalization, 229 Neb. 60, 425 N.W.2d 320 (1988). Obviously, many changes have occurred since the initial adoption of this constitutional principle. In particular, the historic reliance on property taxes as the primary source for the revenue needed to sustain both state and local government functions has, to a large degree, undergone a noticeable shift. Along with the establishment of the State Sales and Income Tax Act in 1967, and the corresponding imposition of the prohibition of a state tax on property contained in Article VIII, Section 1A, other specific constitutional amendments have been adopted which, to some degree, have altered the nature of our property tax system.<sup>1</sup>

Irrespective of these changes, our state supreme court has not, in the area of property taxation, wavered from the constitutional principle mandating uniformity of taxation. Apart from the existence of specific constitutional provisions contained in Article VIII, Sections 1 and 2, such as those authorizing the Legislature to classify and exempt personal property from taxation and to provide for a homestead exemption, the Legislature is prohibited from enacting legislation in contravention of this

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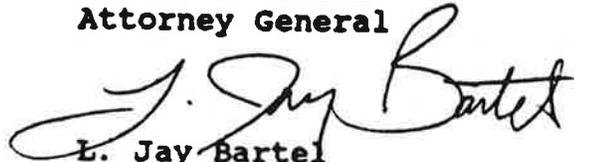
<sup>1</sup>Article VIII, Sections 1 and 2, of the Constitution, have been amended on several occasions to authorize legislative action with regard to specific areas of property taxation. For example, among the specific provisions which have been adopted are those authorizing the Legislature to act to: (1) provide for the taxation of motor vehicles by a different method than utilized for other tangible property; (2) classify and exempt personal property from taxation; and (3) provide for a homestead exemption.

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general constitutional principle. On the basis of the reasons previously stated, it is our opinion that the provisions of LB 84, as amended, would, if enacted, be unconstitutional.

Very truly yours,

ROBERT M. SPIRE  
Attorney General

  
L. Jay Bartel  
Assistant Attorney General

cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED:

  
Attorney General

7-125-13